

## § 1780.73

## 7 CFR Ch. XVII (1–1–05 Edition)

and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the Procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable;

(2) The Request for Proposal shall identify all significant evaluation factors and their relative importance;

(3) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award; and

(4) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner. Unsuccessful offerors should be promptly notified.

(d) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase or competitive sealed bids. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(1) The item is available only from a single source; or

(2) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or

(3) After solicitation of a number of sources, competition is determined inadequate; or

(4) No acceptable bids have been received after formal advertising; or

(5) The procurement is for professional services; or

(6) The aggregate amount does not exceed \$100,000.

## § 1780.73 [Reserved]

## § 1780.74 Contracts awarded prior to applications.

Owners awarding construction or other procurement contracts prior to filing an application, must provide evidence that is satisfactory to the Agency that the contract was entered into without intent to circumvent the requirements of Agency regulations.

(a) *Modifications.* The contract shall be modified to conform with the provisions of this part. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (c) of this section.

(b) *Consultant's certification.* Provide a certification by an engineer, licensed in the State where the facility is constructed, that any construction performed complies fully with the plans and specifications.

(c) *Owner's certification.* Provide a certification by the owner that the contractor has complied with applicable statutory and executive requirements related to Agency financing for construction already performed.

## § 1780.75 Contract provisions.

In addition to provisions required for a valid and legally binding contract, any recipient of Agency funds shall include the following contract provisions in all contracts.

(a) *Remedies.* Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should be included in all contracts for construction.

(b) *Termination.* All contracts exceeding \$10,000, shall contain suitable provisions for termination by the owner including the manner by which it will be